

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA

v.

GERALD LEONARD DRAKE

NO. 5:22-CR-08

STATEMENT OF FACTS

The United States and the defendant, GERALD LEONARD DRAKE, agree and stipulate that the following is true. This Statement of Facts briefly summarizes the facts and circumstances surrounding the defendant's criminal conduct. It does not necessarily contain all of the information obtained during this investigation and applicable to an accurate Presentence Report and Sentencing Guidelines calculation. This Statement of Facts is not protected by proffer agreement or any other agreement and shall be wholly admissible at trial notwithstanding any Rules or statutes to the contrary, including but not limited to, Federal Rules of Evidence 408 and 410, and Federal Rule of Criminal Procedure 11.

ELEMENTS OF THE OFFENSES

To prove the offense alleged in Count Four of the Indictment, charging a violation of 26 U.S.C. §§ 5841, 5861(d), 5871, that is, Possession of an Unregistered Destructive Device, the government must prove each of the following elements beyond a reasonable doubt:

- First.* That the defendant received or possessed a firearm;¹
- Second.* That the firearm was not registered to the defendant in the National Firearms Registration and Transfer Record; and

¹ The definition of "firearm" includes a "destructive device." 26 U.S.C. § 5845(a)(8).

Third. That the defendant acted knowingly.²

To prove the offense alleged in Count Five of the Indictment, charging a violation of 18 U.S.C. §§ 2661A(2)(A), 2661(b)(3), that is, Stalking, the government must prove each of the following elements beyond a reasonable doubt:

First. That the defendant used the mail, any interactive computer service, or any facility of interstate or foreign commerce;

Second. That the defendant did so to engage in a course of conduct that caused substantial emotional distress to another person or placed that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family of that person, or a spouse or intimate partner of that person; and

Third. That the defendant did so with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotion distress to that person; and

Fourth. That the defendant used a dangerous weapon during the offense.³

STIPULATED FACTS

A. Mailing of Threatening Letters

1. GERALD LEONARD DRAKE admits and agrees that on or about September 23, 2017 until on or about October 10, 2018, in the Western District of Virginia, and elsewhere, DRAKE, with the intent to kill, injure, harass, and intimidate another person, used the mail to engage in a course of conduct, including sending threatening letters through the mail, and planting a pipe bomb at the Cedar Creek Battlefield Foundation's Annual Reenactment, that placed Individual A in reasonable fear of death and serious bodily injury to himself and an immediate

² District of South Carolina Jury Instructions, Online Edition 2020.

³ *Id.*

family member, and caused, attempted to cause, and would be reasonably expected to cause substantial emotion distress to Individual A.

2. DRAKE also admits that he used a dangerous weapon during the offense.

3. DRAKE agrees and admits that he wrote and mailed letters threatening harm to various individuals unless event planners canceled civil war reenactments at the Cedar Creek Battlefield (“CCB”) in Middletown, Virginia. DRAKE admits that although these letters were purportedly written and sent by Antifa,⁴ he was the true author and sender of the letters. DRAKE admits that he traveled outside the area of his immediate residence to mail the letters and disguise their true origin.

4. DRAKE admits and agrees that these letters warned of bombings, shootings, and other violence against organizers and attendees for their “celebration of the Civil War.” Letter recipients included the Cedar Creek Battlefield Foundation (“CCBF”) and its board members, *The Winchester Star* newspaper, and others.

5. DRAKE agrees and admits that he mailed a threatening letter with a postmark date of September 21, 2017 to the CCBF visitor center located in Middletown, Virginia. Both the envelope and the letter bore an Antifa symbol⁵ and stated, in part, “Cedar Creek Battlefield people; You need to cancel your coming up celebration of the Civil War on October 13, 14, 15, 2017.” It further stated that if the event was not cancelled, “hundreds” of Antifa supports would cause problems at the event by slashing tires, harassing attendees, and potentially “resort[ing] to actually firing guns into camps.” The letter alleged the event will make “Charlottesville look like a Sunday picnic.”⁶

⁴ “Antifa,” short for Anti-Fascist, does not describe a particular group, but rather describes individuals who adhere to what they consider as “anti-fascist beliefs.”

⁵ The symbol used is commonly used by Antifa; it depicts an anarchist flag overlaying a socialist flag.

⁶ This is a reference to the Unite the Right rally in Charlottesville, Virginia in 2017.

6. DRAKE further admits and agrees that when his threats were unheeded and the annual CCB reenactment went forward as planned in October 2017, DRAKE constructed and later placed a pipe bomb onsite during the event.

7. After the October 2017 CCB reenactment and placement of the pipe bomb, DRAKE admits and agrees that he continued to send threatening letters purporting to be from "Antifa."

8. On June 26, 2018, DRAKE mailed a letter to *The Winchester Star* and the CCBF. These two letters again contained a similar Antifa symbol displayed on the envelope and letter. The letter mailed to CCBF in Middletown was addressed to Individual A, who served as then-president of the CCBF Board of Directors. DRAKE admits that the letter threatened to kill Individual A's mother with a car bomb if the 2018 CCB reenactment was not cancelled.

9. On the same day, a copy of the same letter was sent to *The Winchester Star*, along with one additional line typed at the bottom: "We sent this letter to Cedar Creek to warn them we will be attacking them again."

10. Based on the threatening letters and pipe bomb discovery in 2017, the CCBF decided to cancel the 2018 reenactment event. Furthermore, Individual A decided to resign as president of CCBF due to the ongoing threats and safety concerns.

11. DRAKE further admits and agrees that he mailed another letter postmarked October 5, 2018 addressed to Individual A at the CCCBF visitor's center. In the letter, DRAKE referenced Individual A's departure from the CCBF board and made threats to other individuals, including Individual C and CCBF volunteers. The letter discusses the possibility of killing specific individuals and committing sexual assault, namely threatening rape, against Individual C's family members.

12. Finally, DRAKE admits and agrees that he mailed a final threatening letter to CCBF which was postmarked on December 4, 2018.

B. Possession and Placement of the Destructive Device

13. DRAKE further admits and agrees that on October 14, 2017, he placed a destructive device, as defined in Title 26, United States Code, Sections 5845(a) and (f), that is, a pipe bomb, at the CCB reenactment event. The destructive device was not registered to him in the National Firearms Registration and Transfer Record.

14. Specifically, DRAKE admits and agrees that he manufactured the pipe bomb and placed the pipe bomb in a merchant tent during the CCB reenactment on October 14, 2017. The pipe bomb was discovered around 3:40 PM and law enforcement was immediately called. The area was evacuated and a bomb technician rendered the pipe bomb safe. The discovery of the pipe bomb caused the CCBF to cancel the reenactment activities for the remainder of the weekend.

15. DRAKE further agrees that the pipe bomb was constructed with a metal pipe nipple, metal nuts glued to the pipe nipple, metal end-caps, 9-volt battery, black and red wires, and a mercury switch. Inside, the bomb contained powder, Prydez, and BBs.

16. DRAKE admits that in order to possess such a device, it would be necessary to register it with the National Firearms Registration and Transfer Record. DRAKE admits he did not register the pipe bomb as required by law.

17. DRAKE further agrees and admits that his actions, both the drafting and mailing of the letters and the construction and placement of the pipe bomb, were intended to scare others and cause harm, *but the defendant does not agree that he intended to cause physical harm.*

18. The defendant agrees that the defendant committed all the essential elements of the offenses. This statement of facts is not intended to be a complete accounting of all the facts

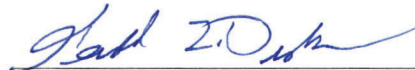
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and events related to the offenses charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Counts Four and Five of the Indictment.

I, GERALD LEONARD DRAKE, have reviewed the above Statement of Facts with my attorney and believe the facts are true and correct. I agree that had this matter proceeded to trial, the United States would have proved the facts outlined above beyond a reasonable doubt.

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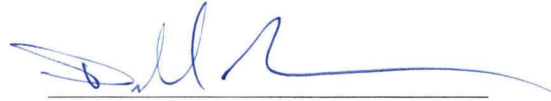
Date



GERALD LEONARD DRAKE
Defendant

4-3-23

Date



DONALD PENDER
Attorney for Defendant

Had this matter proceeded to trial, the United States would have proved the facts outlined above beyond a reasonable doubt. The government reserves the right to present additional evidence at the time of sentencing regarding relevant conduct of the defendant.



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